

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM I. KOCH, an individual, :

Plaintiff, :

vs. :

ERIC GREENBERG, an individual; ZACHYS
WINE & LIQUOR STORE, INC., a New York
corporation; and ZACHYS WINE AUCTIONS,
INC., a New York corporation, :

Defendants. :

No. 07 Civ. 9600 (BSJ) (DCF)
ECF Case

----- X

**DECLARATION OF ARTHUR J. SHARTSIS IN SUPPORT OF DEFENDANT ERIC
GREENBERG'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION PURSUANT TO RULE 12(b)(1) OR, IN THE ALTERNATIVE, TO
DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FEDERAL RULE 12(b)(6)**

I, ARTHUR J. SHARTSIS, declare and state as follows:

1. I am a partner in Shartsis Friese LLP, co-counsel for defendant Eric Greenberg. I make the following statements of my own personal knowledge and if called upon to testify concerning them, could and would do so.

2. I have attached as Exhibit A hereto a true and correct copy of a letter dated November 27, 2007, that I sent by Federal Express on November 27, 2007 for delivery on November 28, 2007 to Layn R. Phillips of Irell & Manella LLP, co-counsel for plaintiff William I. Koch. As shown by the attached copy, this letter included a check for \$272,555.72, the amount calculated as follows:

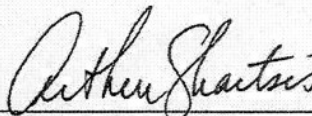
\$228,603.33 (purchase price of eleven bottles of wine)
\$ 42,952.39 (9% interest from 10/28/05-11/28/07)
\$ 1,000.00 (estimated court costs)
\$272,555.72

3. On December 12, 2007, I received a letter from Bruce Wessel, counsel for plaintiff, in which Mr. Wessel rejected the tender made by defendant Eric Greenberg. No check was enclosed.

4. I have attached as Exhibit B hereto a true and correct copy of the Complaint filed in the above-referenced matter on October 26, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17 day of December, 2007, in San Francisco, California.



ARTHUR J. SHARTSIS

EXHIBIT A



SHARTSIS FRIESE LLP

One Maritime Plaza • Eighteenth Floor
San Francisco, California 94111-3598

November 27, 2007

VIA FEDERAL EXPRESS

Hon. Layn R. Phillips, Retired
Irell & Manella LLP
840 Newport Center Drive
Suite 400
Newport Beach, CA 92660-6324

Re: Koch v. Greenberg

Dear Layn:

Enclosed is an envelope that my client has requested that you deliver to your client, Mr. Koch. For your reference I am including a copy of the contents of the envelope, which is a letter and a check.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Arthur J. Shartsis'.

Arthur J. Shartsis

AJS:wgc
Enclosure

cc: Anthony Coles, Esq.
6006032\ASHARTSIS\1474260.1
11/27/07 4:05 PM

Eric Greenberg

November 27, 2007

William I. Koch

Dear Mr. Koch:

Earlier this year you contacted me about a "counterfeit" bottle of Chateau Latour 1928 that you bought at a Zachys auction, which was accidentally included in my single seller consignment of over 17,000 bottles. While there is no certainty that the bottle is counterfeit, I immediately authorized Zachys to refund the purchase price of \$2,873 (your entire auction purchase was \$3.7 million). You turned down that offer. Then, without ever requesting that I refund any purchases, you sued me claiming six other bottles were counterfeit and four more were "possibly counterfeit," all without providing a single fact about why any of those bottles is not authentic.

Unfortunately, your lawsuit is filled with factual errors, including Sotheby's alleged refusal to auction my wine (they made every effort to get the auction) and my alleged wine buying trips with Royal (which never happened).

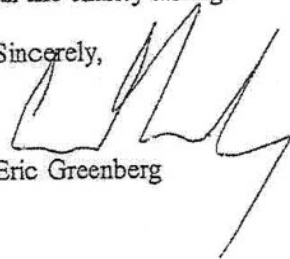
I have never knowingly sold counterfeit wine. Similar wines from my collection have tasted genuine to me. I don't know why you claim each bottle is counterfeit. Unlike most sellers I exposed the corks on many of those bottles so that knowledgeable auction buyers could inspect the wine just as I had done. I do not know if you exercised your right to inspect the bottles before purchasing them. Zachys -- then the world's number one wine auctioneer -- inspected the bottles a number of times. We both obviously relied on Zachys' impeccable reputation.

I am perfectly happy to repay your money and take all the bottles back. Your lawsuit requests rescission and I agree. Accordingly, I enclose a check for \$272,555.72, which covers the amount you paid for the eleven bottles and appropriate interest and costs. I will bear the cost of returning the bottles.


I have never before been sued and have no interest spending my productive time dealing with this matter. In fact, it is my plan to use these bottles in a charity wine tasting for a worthwhile children's cause in New York City. In this way deserving people will benefit and the public will have the opportunity to taste these wines.

This is the "gentlemanly" way to bring this matter to a conclusion. I look forward to receiving the bottles back so I can proceed with the charity tasting.

Sincerely,


Eric Greenberg

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ERIC H. GREENBERG P.O. BOX 4023 ROSS, CA 94957		JPMORGAN CHASE BANK NEW YORK CITY, NY 10023 1-2/210		5776
				11/21/2007
PAY TO THE ORDER OF	William I. Koch			\$ **272,555.72
Two Hundred Seventy-Two Thousand Five Hundred Fifty-Five and 72/100*****				DOLLARS
William I. Koch				
MEMO				
⑈005776⑈ ⑆021000021⑆767030862⑈				